

EPA's proposed budget highlights Biden administration focus on environmental justice concerns

The proposed budget for fiscal year 2022 for the U.S.

Environmental Protection Agency (EPA), submitted to Congress on May 28, provides important insights into the agency's priorities in the coming years under the Biden administration. Broadly speaking, the proposed budget, which is the largest ever in absolute terms, emphasizes what the agency describes as "four cross-cutting priorities: Tackling the Climate Crisis through Science, Advancing Environmental Justice, Supporting State, Tribal and Local Partners and Expanding the Capacity of EPA." These points of emphasis are generally consistent with expectations and with earlier environmental policies adopted by the Biden administration, including the executive order on "Tackling the Climate Crisis at Home and Abroad" (E.O. 14008).

While the agency priorities set forth in the proposed budget are perhaps not particularly surprising, the prominence in the budget of advancing environmental justice, a topic with potential impacts on the oil and gas sector, is unprecedented. (Note, for example, that the terms "environmental justice" or "EJ" appear more than 400 times in the EPA's lengthy budget justification document, compared to just over 40 times in the fiscal year 2021 document.) While environmental justice considerations have been a component of EPA's work since the 1990s, the Biden EPA is poised to bring it to the forefront of environmental decision making. This heightened emphasis is also reflected in EPA Administrator

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Michael Regan's April 7 message to EPA staff, in which he stated that the agency would do more to address environmental justice concerns, including:

- Strengthening enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution.
- Taking immediate and affirmative steps to incorporate environmental justice considerations into EPA's work, including assessing impacts to pollution-burdened, underserved and tribal communities in regulatory development processes and to consider regulatory options to maximize benefits to these communities.
- Taking immediate and affirmative steps to improve early and more frequent engagement with pollution-burdened and underserved communities affected by agency rulemakings, permitting and enforcement decisions, and policies.
- Considering and prioritizing direct and indirect benefits to underserved communities in the development of requests for grant applications and in making grant award decisions, to the extent allowed by law.

Collectively, Administrator Regan's message to staff and the proposed budget reflect the EPA's clear strategy of "embedding environmental justice principles in all agency programs." The EPA's proposed approach to advancing environmental justice would start at the top, with the creation of a national environmental justice program office, headed by an assistant administrator subject to Senate confirmation. The environmental justice office would oversee the new Accelerating Environmental and Economic Justice initiative, funded with an allocation of more than \$930 million from the proposed budget and would be tasked, in part, with making "historic investments in environmental justice programs to address the disproportionate health impacts of communities overburdened by pollution sources." The different approaches toward environmental justice reflected in the 2021 and 2022 proposed budgets are striking. For example, the proposed budget

for 2022 allocates over \$298 million toward environmental justice-related enforcement activities, compared to just over \$12 million for the 2021 proposed budget.

The advancement of environmental justice would play a role in each of EPA's budgeted programs. EPA's intended approach for advancing environmental justice within the context of certain specific programs is set out below.

Compliance and enforcement

EPA promises to "develop and implement a comprehensive action plan for integrating environmental justice and climate change considerations throughout all aspects of its enforcement and compliance assurance work." To that end, the pro-

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posed budget allocates \$31.9 million in additional funds towards EPA Compliance Monitoring program, with the goal of incorporating environmental justice considerations into all phases of the compliance and enforcement process, without using funds needed for the agency's other compliance and enforcement activities.

EPA intends to increase environmental justice-focused inspections and community outreach and to prioritize environmental justice in case selection. The agency has also identified several current enforcement initiatives that will be employed to advance environmental justice, including three that are relevant to the oil and gas sector: Creating Cleaner Air for Communities, which focuses on noncompliance that results in excess emissions of either volatile organic compounds or hazardous air pollutants; Reducing Risks of Accidental Releases at Industrial and Chemical Facilities, which focuses on decreasing the likelihood of chemical accidents and reducing risk to communities; and Reducing Significant Non-Compliance with National Pollutant Discharge Elimination System (NPDES) Permits, which focuses on improving compliance rates with NPDES permits.

Climate change and air programs

In the proposed budget, EPA states that “some people and communities are especially vulnerable to poor air quality and the impacts of climate change, and communities with environmental justice and equity concerns bear a disproportionate share of the risks and impacts.” Climate change is described as “a public health and environmental justice crisis.” EPA considers the two issues so entwined that the approximately \$930 million that would be directed toward advancing environmental justice is actually a portion of the funds allocated to “tackling the climate crisis.” The proposed budget allocates funds to characterize “disproportionate impacts of climate change and air pollution in communities with environmental justice and equity concerns, identify and evaluate strategies to reduce impacts in those communities, and develop and evaluate innovative multipollutant and sector-based approaches to preventing pollution.” With respect to sector-based pollution, EPA intends to focus on individual sectors’ emissions comprehensively with an eye toward prioritizing efforts to address the sources and pollutants of greatest concern to overburdened communities.

As part of that process, EPA requests \$100 million for “a new community air quality monitoring and notification program to support efforts to deliver environmental justice for overburdened and marginalized communities.” The system would provide real-time air quality data to the public in communities most impacted by air pollution. Relatedly, EPA also vows to improve its risk assessment capabilities to identify and determine impacts of exposures to air toxics on communities.

Oil spill prevention, preparedness and response

The agency has requested an increase in funding for the Oil Spill Prevention, Preparedness and Response

program in connection with increasing the program’s focus on “expanding enforcement of environmental justice-related regulations and increased polluter accountability within environmental justice communities.” This will include conducting off-site compliance monitoring activities, allowing inspectors to make compliance determinations from remote locations. EPA would focus inspections at Facility Response Plan facilities and consider targeting its inspections to promote compliance in environmental justice communities.

Superfund

Superfund-related environmental justice initiatives would focus on issues affecting people of color, low income and indigenous communities near Superfund sites. EPA intends to employ its Superfund Enforcement Program to leverage CERCLA and RCRA authorities to “investigate and prevent threatened releases in climate-sensitive and overburdened communities.” EPA also plans to increase community engagement, including requiring Potentially Responsible Parties to provide funding assistance to help communities understand the technical aspects of Superfund remedies.

Although the proposed EPA budget for fiscal year 2022 may not be adopted in the same form as submitted to Congress, the document, along with other recent agency communications and E.O. 14008, clearly demonstrates the Biden administration’s strong intent to emphasize environmental justice considerations across all EPA programs. While the impacts of these initiatives will only be known after the passage of time, the EPA’s focus on environmental justice may alter the agency’s decision-making on permitting, compliance, enforcement and environmental response matters in ways that could materially impact the oil and gas sector. ■

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